

1 Drew J. Ribar
 2 3480 Pershing Ln
 3 Washoe Valley NV 89704
 4 775-223-7899
Const2Audit@gmail.com
 5 Pro Se

6 **UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA**

7 **NORTHERN DIVISION**

8 DREW J RIBAR,

9 Plaintiff,

10 vs.

11 STATE OF NEVADA EX REL., NEVADA
 12 DEPARTMENT OF CORRECTIONS,
 13 CARSON CITY AND ASSOCIATED
 14 DEFENDANTS

Defendants,

15 **I. INTRODUCTION**

16 **Case No.: 3:24-cv-00103-ART-CLB**

17 **PLAINTIFF'S MOTION FOR LEAVE TO
 18 FILE A SUR-REPLY TO DEFENDANTS'
 19 MOTION FOR SUMMARY JUDGMENT**

20 Plaintiff, Drew J. Ribar, respectfully moves this Court for leave to file a sur-reply
 21 to address inaccuracies in the sworn statement of Deputy Jason Bueno regarding the conditions
 22 and duration Plaintiff was detained in Deputy Bueno's patrol vehicle on August 30, 2022.
 23 Specifically, Deputy Bueno stated under penalty of perjury that the rear window adjacent to
 24 Plaintiff's seat was open for the "majority of the time" before transport to the Carson City Jail.
 25 Evidence shows this statement to be factually inaccurate, as Plaintiff was confined in the vehicle
 26 with the windows rolled up and air conditioning vents obstructed for the majority of the
 27 detainment period, thus impacting Plaintiff's safety in 95-degree heat.

28 **II. RELEVANT BACKGROUND**

29 In their Motion for Summary Judgment, Defendants rely heavily on Deputy
 30 Bueno's declaration to argue that conditions within the patrol vehicle did not constitute excessive
 31 Plaintiff's Motion for Leave to File a Sur-Reply to Defendants' Motion for
 32 Summary Judgment - 1

1 force or a Fourth Amendment violation. In his declaration, Deputy Bueno claims that the rear
2 window nearest Plaintiff “was open for the majority of the time” before transport. This
3 statement, offered to depict adequate ventilation, is contradicted by available evidence indicating
4 that the window was only open for 4 minutes and 53 seconds out of a total of 14 minutes and 19
5 seconds, leaving it closed for 9 minutes and 26 seconds. Moreover, Plaintiff experienced
6 significant distress, discomfort, and difficulty breathing due to lack of ventilation and restricted
7 airflow on an exceptionally hot day.

9 **III. GROUNDS FOR LEAVE TO FILE A SUR-REPLY**

10 The Court may grant leave for a sur-reply when new evidence, inaccuracies, or
11 misrepresentations arise in the record that were not addressed in the original motion or
12 opposition. Here, the Plaintiff seeks to correct a factual misrepresentation that is material to the
13 Court’s decision on summary judgment:

14 **1. Contradiction in Bueno’s Declaration:** Deputy Bueno’s statement that the window was
15 open for the majority of the time is factually incorrect. Evidence, including video footage
16 and time-stamped records, shows the window was open for only 4 minutes and 53
17 seconds—significantly less than half of the total time Plaintiff was in the vehicle.

18 **2. Plaintiff’s Personal Safety in Extreme Heat:** Plaintiff’s detainment occurred on a 95-
19 degree day, with the vehicle’s ventilation restricted, creating unsafe conditions. This
20 information challenges Defendants’ argument that Plaintiff’s conditions of confinement
21 did not rise to a constitutional violation.

22 **3. Necessity for Accurate and Complete Record:** Deputy Bueno’s misrepresentation
23 regarding the window position affects the reliability of Defendants’ narrative and
24 prejudices Plaintiff’s case by minimizing the severity of conditions he experienced.

Granting leave to file a sur-reply will allow Plaintiff to address this crucial factual discrepancy and ensure a complete and accurate record before the Court.

IV. CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that the Court grant leave to file a sur-reply to address the inaccuracies in Deputy Bueno's declaration, ensuring that the factual record accurately reflects the conditions of Plaintiff's detainment.

Respectfully submitted,

Drew J. Ribar

Pro Se

Dated this 31st of October, 2024.

/S/ Drew J. Ribar

Drew J. Ribar Pro Se
3480 Pershing Ln.
Washoe Valley NV 89704
775-223-7899
Const2Audit@gmail.com

CERTIFICATE OF SERVICE

I, Drew J. Ribar, hereby certify that on this 31st day of October 2024, I served a true and correct copy of the foregoing **Opposition to Defendants' Motion for Summary Judgment** by the method indicated below and addressed to the following:

Via [ECF/Electronic Filing and email]:

1 Douglas R Rands attorney for the State of Nevada via email at
2 drands@ag.nv.gov
3
4

5 Katherine F Parks attorney for Carson City via email at kfp@thorndal.com
6

7 I declare under penalty of perjury under the laws of the State of Nevada and the
8 United States of America that the foregoing is true and correct.
9

10 **DATED:** October 31, 2024.
11

12 /s/ Drew J. Ribar
13

14 **Drew J. Ribar**
15 Plaintiff, Pro Se
16

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20 775-223-7899
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28 PLAINTIFF'S MOTION FOR LEAVE TO FILE A SUR-REPLY TO DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT - 4